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**DEVELOPMENT SERVICES
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March 30, 2012

APPEAL OF SEPA, PRD AND SUBDIVISION APPROVAL OF BURNSTEAD
CONSTRUCTION COMPANY WOODWAY ELEMENTARY PLAT/PRD, P-2007-17/PRD-
2007-18.

1. Name/Address/Phone: Lora Petso and Colin Southcote-Want, 10616 237th Place S.W.,
Edmonds, WA 98020, 206-542-7464.

2. Basis for Standing: We are both a party of record in this matter. We testified at the hearing
examiner's hearing on February 9, 2012. Lora submitted written materials and exhibits both at
the hearing, and during the period in which the record was held open. We reside near the subject
property, and will be subject to adverse impacts from the project.

3. Identify the application: The application that is the subject of this appeal is the plat/PRD
proposed by Burnstead Construction with file numbers P-2007-17, PRD-2007-18. We also
challenge the SEPA DNS, and/or lack thereof.

4. Grounds for appeal: We plan to submit written argument to the Council pursuant to ECDC
20.07.005 (C). We request a minimum of six weeks notification prior to the proposed appeal date
so that we may prepare and submit materials 12 working days prior to the closed record review
as contemplated in ECDC 20.07.005(D). By submitting materials 12 working days in advance,
we can allow other parties of record the maximum time to respond to the materials. We further
request that the 12 page restriction provided in ECDC 20.07.005 (F) be waived due to the
complexity of this case. We plan to present one or more powerpoints during oral argument.

The grounds for appeal include, but are not limited to, the following:

A failure of SEPA review, including but not limited to the Hearing Examiner's clearly
erroneous conclusion in finding of fact 8 that "Subsequent decisions by the Superior and
Appellate courts have upheld the SEPA decision." A copy of the Superior Court order stating
"THAT the MDNS, subdivision approval, and PRD approval reversed" was attached as Exhibit 2
to materials submitted while the record was held open. The Appellate Court decision also
indicated that Lora met the burden to show the land use approvals were erroneous. (See page 2
and page 24). Additional SEPA errors include, but are not limited to, drainage (see below, and
including but not limited to flooding to the west from filling the drainage ditch, lack of
maintenance, and overflow into the failed system in Woodway Meadows), critical areas (finding
6 is incorrect since both the SEPA checklist and the application narrative identify that there is a
Fish and Wildlife Habitat conservation area on site, see 2007-1 and 2007-11), underground
wiring (the order of Superior Court requires a condition that no variance from underground
wiring be permitted), property encroachment (since residents along the western side of the site
will lose property), and traffic/parking (the hearing examiner clearly erred in failing to consider
these impacts, and in concluding they were discussed in 2007 -- the hearing examiner decision
from 2007 clearly indicates that Hickman Park did not exist in 2007.) Further, condition 9, as
discussed below, may not be eliminated, as it was relied upon by the ADB, the prior hearing
examiner and Superior Court. Finally, the SEPA DNS was based on 66,000 square feet of

impervious surface. The hearing examiner's condition, allowing 3000 square feet per lot, for 27 lots, allows 81,000 square feet before even including the road area. This requires a new SEPA review.

A failure to correctly apply the PRD requirements, including but not limited to the requirement of ADB review in ECDC 20.35.080(3) that the proposal be reviewed by the ADB prior to hearing examiner approval and the requirement in ECDC 20.35.040A3 that the ADB approve the buildings. The hearing examiner clearly erred in concluding, p18, that the requirement for ADB approval could be waived based on "testimony" from staff or by pretending, p19, only conceptual building designs are required. ECDC 20.35 clearly requires the actual buildings be provided, not merely conceptual designs. ADB review is particularly critical when the changes eviscerate the conditions of the ADB approval and make 50% of the proposed home designs unable to fit on the lots. Other PRD errors include an illegal rezone (PRD's may not increase density but given the right of way numbers from the drainage plan, only 24.8 RS-8 homes could fit on the site so 27 homes is an illegal rezone), lack of safe and efficient site access (ECDC 20.35.040(a2)), illegal tree cutting in violation of ECDC 20.35.050A5, lack of compliant lots and buildings under ECDC 20.35.060A4, 20.35.060B3, 20.35.060A1, and 20.35.060B1, lack of 10% usable open space (since Tract E is a critical area according to the SEPA checklist and applicant narrative, and thus may not be counted toward usable open space, and Tract A and F may not be counted as they are not and cannot for safety reasons ever be "usable open space"), perimeter buffer (finding 7h repeats the prior failure to buffer the North and West sides of the project) and the separate requirement for adequate buffering is not met, and, now, either an error in that the proposed homes don't fit on the property, or an error that the application does not include proposed home designs as required. Further, condition 9 may not be altered since the ADB, the hearing examiner, and the Superior Court relied upon that condition in determining compliance with ECDC 20.35.040, see for example the ADB minutes at 9 or the memorandum decision at 24. Also, without condition 9 the plat fails to minimize impervious surfaces as required by ECDC 20.35.050A3 as shown in the drainage reports where pervious surfaces are reduced from 2.71 acres to 2.63 acres. The change from 35% impervious surface per lot to 3000 square feet impervious surface per lot plainly does not "minimize" impervious surfaces. Contrary to the hearing examiner's conclusions, that change is a "substantive" change in the PRD proposal. Further, the condition requiring deed restrictions on perimeter lots (2007-14) must be retained since it was relied upon by the Superior Court in finding compliance with ECDC 20.35.030 at page 23 of the memorandum decision. Finally, the proposal does not comply with the comprehensive plan requirements, particularly regarding drainage.

A failure to correctly apply the subdivision requirements, including but not limited to the requirement in ECDC 20.35. 080A4 to minimize offsite drainage impacts since eliminating the drainage ditch, constructing homes, increasing impervious surfaces, and building a vault overflow to 237th will all increase off site impacts. Other subdivision errors include the illegal road (the hearing examiner erred in concluding this was outside the scope of the proceeding since the court clearly stated that the project will be required to comply with all applicable laws and the Transportation plan includes policy 4.2 xiv) and the failure to consider the purpose statements of both the State and local subdivision ordinances (public interest and adequate services) and a failure to make adequate provision for services, including drainage, under RCW 58.17.110 and the corresponding provision of the ECDC. Finally, the proposal does not comply with the comprehensive plan requirements, particularly regarding drainage.

A failure to correctly apply vesting requirements, including but not limited to attempting, in condition 8, to waive the requirements of the 1992 stormwater manual for testing methodology (see 2012-5 page iii and AES letter at page 3). Under Washington law, vesting cannot be waived. The applicant's drainage expert testified that they would not follow the 1992 requirements in designing the lot infiltration systems. Again, this is illegal. He also testified they'd test around for a good location on each lot, but given the restrictions of the 1992 stormwater code and the requirements for driveways and walkways, there is not sufficient space for infiltration on the lots or for testing a variety of locations. Finally, they have not conducted the tests required for closed depression analysis under the 1992 manual, nor have they provided adequate testing for a vault of over 100 feet in length.

The entire proceeding is illegal given condition 1 from the prior hearing examiner's decision, see 2007-2, and ECDC 20.35.080.

Additional drainage errors include, but are not limited to, the following: 2012-8 uses the wrong numbers for the 10 and 100 year storm. The 1.9 and 2.4 should be 2 and 3. The 20/80 split in soil type assumptions is contradicted by the data provided, and the hydrograph plots requested by the City were not provided. Absent adequate testing, the comprehensive plan requires sizing the vault assuming infiltration at 2 inches per hour, not 2.3. The vault as designed cannot be maintained (6 feet is not deep enough under OSHA confined space rules) and the vault cannot be made deeper because the testing shows denser soils below the 6 foot depth. Eliminating the drainage ditch and using a massive centralized drainage facility are illegal under our comprehensive plan. The vault size calculation is wrong, since the impervious surface is now over 50% of the plat, the adjustment (29 used) should be in excess of 30, see Figure III-1.1.

The hearing examiner has failed to provide for adequate maintenance of the drainage vault as ordered by both courts. Instead, the HWA report at page 2 indicates that the vault is of a kind that is difficult to maintain.

In addition, the proposal does not comply with the coverage requirements of ECDC 16.20.030.

Finally, the hearing examiner erred in applying a "feasibility" standard of review. SEPA requires no significant adverse environmental impacts PRIOR to committing to a project, and the PRD and subdivision ordinances require compliance. There is no provision in Edmonds code or Washington case law for a "feasibility" standard.

5. Relief Requested: Denial of the application. In the event the project is not denied, condition 9 from the prior hearing examiner's approval should be reinstated (a maximum of 35% impervious surface coverage per lot), and a condition should be added per the direction of the Superior Court that no variance from the underground wiring requirement will be permitted.

6. Statement: I have read this appeal and believe the contents to be true.



Lora Petso



Colin Southcote-Want